IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2346 OF 2003
IN
SUIT NO.3514 OF 2002

Chhaya Prakash Desai Plaintiff

versus

Dilip Asharam Tralshawala
and others Defendants

Mr.M.P.Rao with Mr.F.Dubash i/by Lekhs Legal for defendant no.4.
Mr.D.H.Mehta for plaintiff.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 24th June 2005

PC :

1. The suit is filed for administration of estate of deceased father of plaintiff. Defendant nos.1 to 3 are the executors whereas defendant nos.4 and 5 are the brothers of the plaintiff and sons of deceased. Together, it is claimed, that they have one third share in the estate of deceased.

2. The estate includes a flat with garage at Cuffe Parade, a dispensary at Colaba and some shares and investments.

3. An ad-interim order was passed by this Court which was modified in the appeal. Mr.Mehta and Mr.Rao agree that an ad-interim order was passed in Notice of Motion No.2948 of 2002 which was modified by Division Bench in Appeal. There is ad-interim order passed in the Notice of Motion taken out in 2003 i.e. present notice of motion. It is agreed that these orders should continue till hearing and final disposal of the suit.

4. Mr.Mehta brings to my notice the fact that the dispensary was used during his life time by the father. That dispensary is in the premises belonging to Northcote Nursing Home Pvt. Ltd. situate at Colaba, Mumbai. He states that today the position is that the dispensary/ room no.12 in the building known as Northcote Nursing Home is lying vacant and unused. He states that the estate would benefit if appropriate orders are passed permitting use of this dispensary by a medical practitioner. He, therefore, seeks appropriate orders. Mr.Rao appearing for defendant nos.4 and 5 has no objection to the plaintiff and defendants 4 and 5 making a joint request to said Nursing Home and if appropriate permissions are granted premises being offered to

a medical practitioner for use as a consulting room/dispensary. Of course, this is without creating any right, title and interest in favour of such medical practitioner. Therefore, parties agree that if such permissions are granted and if use and occupation is allowed to a medical practitioner, then the amounts paid in that behalf be deposited in the Court to abide by further orders and directions in the suit. In my view, continuation of ad-interim order would not prevent parties from exploring the possibility of the Nursing Home/Dispensary being put to use as above. In that behalf, liberty is reserved to the plaintiff to approach this Court for further orders and directions with regard to appropriation/adjustment of the amounts deposited.

5. It would also be open for the parties to approach this Court and seek directions with regard to amounts invested pursuant to the ad-interim order passed by Justice Rebello. Reserving rights of both sides to approach this Court and keeping open all contentions, present Notice of Motion is made absolute in terms of above mentioned ad-interim orders.

6. It will be open for the plaintiff to approach this Court in the event the dispensary/ room is not put to any use, for appropriate reliefs including direction to respondents 4 and 5 to deposit some amount for use of the flat occupied by defendant no.4. This order and the earlier ad-interim orders would not prevent plaintiffs from applying and the defendants from raising all contentions including jurisdiction of this Court. Motion is not being pressed against defendants 1 to 3 as they are executors.

(S.C.DHARMADHIKARI, J.)